

REMARKS

Overview:

Claims 67, 71, 73, 75, 76, 79-81, 84-110, and 125-159 have been examined in the Office Action under reply, the first action on the merits for this application (please note that this application was filed in early 2002; unfortunately, two years have passed since the Office inadvertently abandoned the application in 2004).

The claims stand rejected as follows:

- (1) under 35 U.S.C. §112, first paragraph, for failing to comply with the written description requirement (claims 124-159);
- (2) under the judicially created doctrine of obviousness-type double patenting over claims 1-20 of U.S. Patent No. 6,939,664 to Huang et al. (“Huang”) (claims 67, 71, 73, 75-76, 79-81, 84-110, and 125-159);
- (3) under 35 U.S.C. §102(b) as anticipated by Sooriyakumaran et al. (2001) *SPIE's 26th Annual International Symposium and Education Program on Microlithography 4345-35:266* (“Sooriyakumaran”) (claims 67, 71, 73, 75-76, 79-81, 84-110, and 125-159);
- (4) under 35 U.S.C. §102(b) as anticipated by Houser et al. (1999) *Proceedings of SPIE-The International Society for Optical Engineering, 3710, PT. 1, Detection and Remediation Technologies for Mines and Minelike Targets IV, 394-401* (“Houser”) (claims 67, 71, 73, 75-76, 79-81, 84-110, and 125-159).

Furthermore, US 2004/0229159 A1 to Kanagasabapathy et al. is cited as prior art made of record and not relied upon.

Applicants apologize for mistakenly identifying claims 111-118 as canceled in the response of 23 October 2003. These claims are correctly identified as withdrawn in the listing of the claims.

The claim rejections outlined above are traversed for at least the reasons set forth below.

Rejection under 35 U.S.C. §112, 1st paragraph:

Claims 124-159 stand rejected under 35 U.S.C. §112, 1st paragraph, as failing to comply with the written description requirement. As claim 124 is currently withdrawn, applicants presume that the Examiner meant to refer to claims 125-159 in making this rejection.

In the Action, the Examiner alleges that the “claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art

that the inventor(s), at the time the application was filed, had possession of the claimed invention.” Applicants traverse this rejection on the grounds that the Examiner has failed to satisfy her initial burden for such a rejection. As stated in MPEP §2163.04, “The Examiner has the initial burden of presenting by a preponderance of evidence why a person skilled in the art would not recognize in an applicant’s disclosure a description of the invention defined by the claims. *Wertheim*, 541 F.2d at 263, 191 USPQ at 97.” In the rejection (reproduced above in its entirety), the Examiner provides no evidence whatsoever to support the position that the claims lack written description. By providing no evidence, the Examiner has clearly failed to provide a “preponderance of evidence” in support of the rejection.

Furthermore, according to MPEP §2163.04, “[a] description as filed is presumed to be adequate, unless or until sufficient evidence or reasoning to the contrary has been presented by the examiner to rebut the presumption. See, e.g., *In re Marzocchi*, 439 F.2d 220, 224, 169 USPQ 367, 370 (CCPA 1971). The Examiner, therefore, must have a reasonable basis to challenge the adequacy of the written description.” Clearly, then, the rejection is improper - ***the Examiner has not provided a single reason for challenging the adequacy of the written description.***

In any case, applicants note that support for claims 125-159 can be found in the specification as outlined on page 14 of applicant’s response dated 23 October 2003. Based on the specification as filed, therefore, one of skill in the art would understand that applicants had possession of the claimed invention at the time the application was filed.

Accordingly, withdrawal of the rejection is respectfully requested. In the event that the rejection is maintained, applicants request an explanation of the basis for the rejection that is sufficiently detailed to enable applicants to formulate a response.

The nonstatutory obviousness-type double patenting rejection:

Claims 67, 71, 73, 75-76, 79-81, 84-110, and 125-159 stand rejected on the ground of nonstatutory obviousness-type double patenting as unpatentable over Huang. Without conceding in the merit of this rejection, and in order to expedite prosecution, applicants are filing a terminal disclaimer over US Patent No. 6,939,664.

Rejection under 35 U.S.C. §102(b) over Sooriyakumaran:

Claims 67, 71, 73, 75-76, 79-81, 84-110, and 125-159 stand rejected under 35 U.S.C. §102(b) as anticipated by Sooriyakumaran. This rejection is traversed.

First, it must be noted that the Sooriyakumaran paper published in August 2001, and derives from an abstract presented at a conference on February 26, 2001 (SPIE Advances in Resist Technology and Processing XVIII, Santa Clara, California). Therefore, the reference cannot be prior art under 35 U.S.C. §102(b) because it was published less than one year prior to the filing date of the present application, February 19, 2002. Furthermore, this application is entitled to a filing date of December 21, 2000, insofar as the pending claims are fully supported by the specification of the parent application hereto, US Serial No. 09/748,071, filed 12/21/00, as shown in the table below.

Claim	Support in 09/748,071*
67	Para. [0044]-[0047]
71, 73, 75-76	Para. [0036], [0046]
79-81	Para. [0045]-[0047]
84-85	Para. [0035], [0045]-[0046]
86-97	Para. [0050]
98-100	Para. [0049]
101-102	Para. [0060]
103-104	Para. [0061]
105-110	Para. [0064]-[0065]
125-126	Para. [0046]-[0047]
127-159	Para. [0050]

*See US 2002/0081520, the publication that corresponds to USSN 09/748,071.

Accordingly, the reference is not available as a reference under 102(a) because it does not predate the invention.

Furthermore, the reference cannot be applied under 35 U.S.C. §102(a) because it does not represent the work of “others” as required by the statute. Applicants refer the Examiner to the “In re Katz” declaration submitted on June 11, 2002 with the Second Preliminary Amendment, entitled “Declaration of Ratnam Sooriyakumaran, Robert David Allen, and Debra Fenzel-Alexander.”

The Declaration indicates that the named inventors on the present application--Ratnam Sooriyakumaran, Robert David Allen, and Debra Fenzel-Alexander--are the only joint inventors of the subject matter presently claimed, and that the other individuals named as co-authors on the aforementioned publications are not co-inventors herein. Rather, as indicated in the Declaration, both

Dr. Fender and Dr. Wallraff were working under the direction of the named joint inventors, and neither Dr. Fender nor Dr. Wallraff contributed to the conception of the invention claimed in the present application.

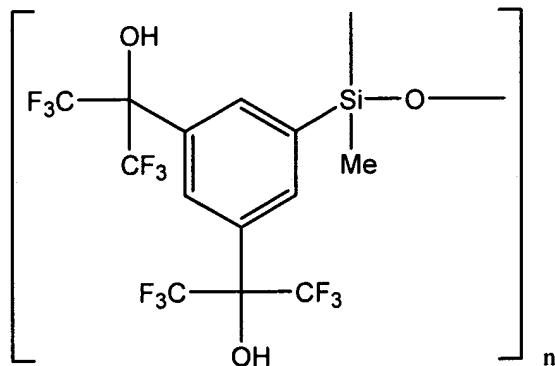
Pursuant to Section 715.01(c) of the M.P.E.P., then, the Sooryakumaran publications does not represent prior art under 35 U.S.C. §102(a) because the publication describes applicants' own work. See also *In re Katz*, 687 F.2d 450, 215 USPQ 14 (CCPA 1982), the leading case on point, cited in the aforementioned section of the M.P.E.P.

Withdrawal of the rejection is thus in order and such action is respectfully requested.

Rejection under 35 U.S.C. §102(b) over Houser

Claims 67, 71, 73, 75-76, 79-81, 84-110, and 125-159 stand rejected under 35 U.S.C. §102(b) as anticipated by Houser. This rejection is traversed.

The Examiner cites poly[oxy[[3,5-bis[2,2,2-trifluoro-1-hydroxy-1-(trifluoromethyl)ethyl]phenyl]methylsilylene]], having the following structure:



Upon inspection, however, it is clear that the disclosure of Houser does not anticipate the claims of the application. In the structure shown above and disclosed in Houser, applicants direct the Examiner's attention to the Si atoms in the polymer backbone, each of which is bound to a phenyl ring, **two** oxygen atoms (one not shown in the above structure), and a methyl group. In contrast, claim 67 of the application is directed to fluorinated silsesquioxane polymer comprised of monomer units having the structure (I), shown above in the listing of the claims. In structure (I), the Si atoms of

the polymer backbone (excluding terminal Si atoms) are each bound to **three** oxygen atoms and a group selected from R¹, R², R³, and R⁴.

In addition, applicants direct the Examiner's attention to the substituents on the phenyl groups that are present in the compounds of Houser. These substituents have the structure –C(CF₃)₂(OH). In contrast, the substituents on the Si atoms of compounds of structure (I), as shown in the listing of the claims, have the structure of formula –(Q)_n-CR⁷R⁸R⁹, where R⁷ is **hydrogen** and R⁸ and R⁹ are as described above. Clearly, then, the materials of Houser are different from the claimed invention.

It is axiomatic that anticipation requires identity of invention, i.e., that a claimed invention be identically disclosed in a cited reference. Without identity of invention, there can be no anticipation. In the present case, accordingly, the cited reference cannot anticipate the claims because of (at least) the distinctions noted above.

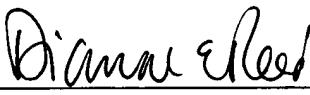
Accordingly, applicants respectfully request withdrawal of the anticipation rejection over Houser.

CONCLUSION

Applicants respectfully submit that all of the pending claims are in condition for allowance, and a prompt mailing of the Notice of Allowance is requested. If the Examiner has any questions concerning this communication, or would like to discuss the application, the art, or other pertinent matters, she is invited to contact either of the undersigned representatives at the telephone number below.

Respectfully submitted,

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